



**Business Law Reform and
Alternative Dispute Resolution
Development**

Under the USAID/Madagascar Legal, Regulatory and
Judicial Reform Activity
USAID contract No. 623-C-00-98-00029-00

**Madagascar Participation & Poverty (P&P) Project
Legal, Regulatory, Judicial Reform
Activity**

October 1, 1999 – December 31, 1999

**Quarterly Performance Monitoring Report
(Sixth Quarter)**

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I. CONTRACTOR'S REPORT

A. INTRODUCTORY NOTE

Section I.B. should include a table describing the significance to the overall business law reform effort in Madagascar of the reformed laws and decrees on which we have provided commentary, along with an analysis of the extent to which the final versions of those laws and decrees utilized our recommendations. The consultant responsible for providing the information to be presented in this table has not done so. ARD/Checchi regrets this omission and has arranged for the Law Development Advisor to prepare this table by March 31, 2000.

B. NARRATIVE

1. Background

Please refer to the previous quarterly reports, which provide a description of the background of this contract.

2. Expected Results

Please refer to the previous quarterly reports, which describe USAID/Madagascar's Strategic Objectives (SOs) and the Special Program Objective (SPO) *Improved Environment for Private Initiative*, under which the ARD/Checchi contract falls. The earlier reports also detail the Mission's two Intermediate Results (IRs) and five Sub-Intermediate Results (Sub-IRs) and the relationship of the contract to those results.

3. Sixth Quarter Activities

a. Labor Code Reform

Mr. Don Zimmerman, who spent nearly two months in Antananarivo during the fourth quarter working with the Labor Directorate of the Ministry of Civil Service, Labor and Social Laws and the tripartite *Conseil National de l'Emploi* (CNE) on a reformed Labor Code, returned to Antananarivo in mid-September. His second assignment was intended to provide the technical legal assistance believed necessary to complete a draft code. With M. Mboara Andrianarimanana from ARD/Checchi's subcontractor, JURECO, Mr. Zimmerman provided further labor code reform guidance during this second visit. However, early in this assignment labor and management (two-thirds of the tripartite CNE) decided to boycott further CNE meetings, reflecting labor and management dissatisfaction with two decrees issued by the Ministry concerning the Board of Directors (*Conseil d'Administration*) of the Ministry's social welfare bureau's *Caisse Nationale de Prévoyance Sociale*, (CNaPS). Both labor and management perceived these decrees as undermining the trilateral nature of the CNaPS and an illustration of the government's lack of commitment to the labor reform effort. With further drafting on the reformed Labor Code stalled, in mid-October USAID agreed with Mr. Zimmerman's recommendation that his assignment be suspended until the impasse over further drafting was

resolved. The International Labor Organization, which also was providing technical assistance to the CNE, agreed with this approach and it too withdrew its advisor.

b. ADR Training and National Arbitration and Mediation Center

During November 1999, ARD/Checchi sent a team of four international advisors--Mr. Alexander Blumrosen, Mr Howie Clavier, Mr. Christopher Armeniades and M. Raphaël Jakoba--and an administrative support specialist, Ms. Ericka Moerkerken, to Madagascar to conduct ADR promotional activities and arbitration and mediation training in five cities. They were assisted by M. Louis Rajaonera, M. Ratiaray Ramarolanto and M. Mboara Andrianarimanana of JURECO. During their stay, the experts provided arbitration training to approximately 30 persons in 2 cities (Antananarivo and Tamatave) and mediation training to approximately 41 persons in 3 cities (Antananarivo, Tamatave and Antsirabe). The experts also presented the ADR overview module in 3 cities (Antananarivo, Antsirabe, Fianarantsoa) to a combined audience of approximately 41 people.

The international experts also used their time in Madagascar to meet with local ADR steering committees, formed in conjunction with these and earlier ARD/Checchi ADR activities. These committees, with assistance from the experts, developed a basic consensus on the concept and steps necessary to create a national arbitration and mediation center.

The training and promotional events concluded with an information session in Antananarivo, with questions and answers, that was followed by a reception attended by the Ambassador and the USAID Mission Director. Some 50 persons attended this event; while a list of the actual attendees is not available, the list of invitees is attached as Annex A.

c. Magistrate Training in Company-Related Laws and Arbitration Law

While in Madagascar in November 1999 to provide arbitration training, ARD/Checchi international expert Alexander Blumrosen and local expert Ratiaray Ramarolanto provided a day of training at the *Ecole National de la Magistrature et des Greffes* on the company-related laws and decrees and on the Arbitration Law.

d. Arbitration Training in Paris

At USAID's request, ARD/Checchi identified five candidates with the interest and ability to participate in a five day arbitration training course given in December 1999 by the International Chamber of Commerce in Paris. While one of the five could not attend, ARD/Checchi provided administrative support to the four candidates who participated in the highly professional training.

e. Administration

In December 1999, the CTO met with the ARD/Checchi Project managers in Washington and completed the six-month contract review on both Business Law Reform and ADR.

f. Milestone Completion

The following table shows those activities defined as milestones under the Second Year Work Plan that were completed during the Sixth Quarter (October 1-December 31, 1999):

Business Law Reform

- 1.2.05 Commentary and Technical Assistance on Labor Code (currently suspended)
- 1.2.06 In-Service Training on Company-Related Laws for Judges
- 1.2.11 Sixth Month Review with CTO

ADR

- 2.2.05 Training for Arbiters and Mediators
- 2.2.06 In-Service Training for Judges on Arbitration Law
- 2.2.08 Offshore Training for Arbiters as Arbitration Trainers
- 2.2.10 Sixth Month Review with CTO

4. Levels of Effort Provided per CLIN

a. Sixth Quarter

CLIN #	Max Days	SOW/ Work Order	Description of Work Order	Consultant Name	# of Days
0001-1 U.S.-Finance	125	11 13	Law Development Advisor	Tom Reynders Alexander Blumrosen	1.125
0001-2 U.S.-Company	125	11 13	Law Development Advisor Company Law	Tom Reynders Alexander Blumrosen	.375 1
0001-3 U.S.-Property	125	11	Law Development Advisor	Tom Reynders	.375
0001-4 U.S.-Labor	125	12	Labor Law Drafting and Commentary Law Development Advisor	Don Zimmerman Tom Reynders	22 .375
0001-5 Local-Finance	175		Local Law Development Advisor		
0001-6 Local-Company	175	13	Local Law Development Advisor	Ratiaray Ramarolanto	1
0001-7 Local-Property	175				
0001-8 Local-Labor	175				
0001-9 U.S.-ADR Support	100	13	US ADR Support International ADR Specialist	Christopher Armeniades Howie Clavier Alexander Blumrosent Raphaël Jakoba	8 26 11 9
0001-10 U.S.-ADR Sensitization	75	11 13	Law Development Advisor International ADR Specialist	Tom Reynders Howie Clavier	1.75 4
0001-11 Local-ADR Association	50	13 13 13	Local Law Development Advisors	Ramarolanto Ratiaray Louis Rajaonera Mboara Andrianarimanana	17 7 7
0001-12 Local-ADR ToT	50				
0001-13 Local Follow-Up	100				
0001-14 Local Management	25				

b. Cumulative to Date (Quarters One through Six)

CLIN #	Maximum Days	Cumulative Days
0001-1: U.S.-Finance	125	45.55
0001-2: U.S.-Company	125	52.375
0001-3: U.S.-Property	125	5.6
0001-4: U.S.-Labor	125	84.85
0001-5: Local-Finance	175	38.00
0001-6: Local-Company	175	83.25
0001-7: Local-Property	175	7.25
0001-8: Local-Labor	175	86.25
0001-9: U.S.-ADR Support	100	144.4875
0001-10: U.S.-ADR Sensitization	75	41.9375
0001-11: Local-ADR Association	50	45.75
0001-12: Local-ADR ToT	50	3.50
0001-13: Local Follow-Up	100	6.00
0001-14 : Local Management	25	6.00
Totals	1600	650.8

5. Legislation Monitoring and Tracking Tables

a. Status, Critical Dates and Events of Legislation Reviewed by ARD/Checchi

	Law/Regulation Name-English/French	Date				
		Drafting / Comment	CRDA / Other	Further Comment	NA Adoption	Official Publication
1	Arbitration Law / Loi sur l'arbitrage	8/98	9/98		11/11/98	12/21/98
2	Company Law / Loi sur les sociétés commerciales	9/98				
3	Tradesman's Law / Loi sur le statut du commerçant	8/98	9/98		8/2/99	8/16/99
4	Competition Law / Loi sur la concurrence	8/98	9/98			
5	Transparency Law / Loi sur la transparence des entreprises	8/98	9/98		8/19/99	8/30/99
6	Legal Notice for Real Property Mortgages Law / Loi sur l'hypothèque judiciaire provisoire	8/98	9/98		8/19/99	8/30/99
7	Commercial Registry Decree / Décret sur le registre du commerce et des sociétés	8/98	9/98			[1/3/00]*
8	Bankruptcy Law / Loi sur les procédures collectives d'apurement des passifs	4/99				
9	Labor Code / Code du travail	6/99	**			
10	Leasing Law / Loi sur le Crédit Bail					

* Published after end of Sixth Quarter

** CNE drafting effort suspended

b. Business Law Reforms and ARD/Checchi Contributions

Law/Regulation Name- English/French	Purpose	Status	ARD/Checchi Activities
Arbitration Law / <i>Loi sur l'arbitrage</i>	Establishes legal framework for arbitration	Adopted and promulgated	Extensive commentary provided, notably on using UNCITRAL model law for international arbitration. Technical assistance incorporated in law.
Company Law / <i>Loi sur les sociétés commerciales</i>	Defines the legal forms of business enterprises	CRDA completed drafting process, preparing text for review by commentators	Extensive commentary provided, notably on forms of business enterprises. Extent to which technical assistance incorporated not known until text available
Tradesman's Law / <i>Statut du commerçant</i>	Defines what a business is and who may engage in business	Adopted and promulgated	Commentary on inclusion of foreign businesses and technical aspects of draft. Extent to which commentary incorporated under review.
Competition Law / <i>Loi sur la concurrence</i>	Defines fair and unfair competition practices	CRDA action completed but blocked by Ministry of Commerce	Extensive commentary aimed at liberalizing and increasing specificity.
Transparency Law / <i>Loi sur la transparence des entreprises</i>	Specifies the kinds of information that a business make available to the public	Adopted and promulgated	Minor technical suggestions. Extent to which commentary incorporated under review.
Legal Notice for Real Property Mortgages Law / <i>Loi sur l'hypothèque judiciaire provisoire</i>	Provides for public notice of liens on business property	Adopted and promulgated	Minor technical suggestions. Extent to which commentary incorporated under review.
Commercial Registry Decree / <i>Décret sur le registre du commerce et des sociétés</i>	Establishes commercial register	In force, published in Official Gazette	Minor technical suggestions. Extent to which commentary incorporated under review.

Bankruptcy Law / <i>Loi sur les procédures collectives d'apurement des passifs</i>	Establishes legal framework for commercial enterprises to declare bankruptcy	Under review by CRDA	General guidance provided on theory and best international practices. ARD/Checchi anticipates further technical assistance during the drafting process.
Labor Code / <i>Code du travail</i>	Provides comprehensive framework for labor/management relations	Drafting activity suspended	Extensive technical assistance provided on theory and best international practices. International Labor Law Expert now on second visit to assist in preparation of final draft.
Leasing Law / <i>Loi sur le Crédit Bail</i>	Creates alternative methods and resources for SME financing	To begin in 7 th Quarter	

C. FINANCIAL

Contract Value	\$ 1,452,136.00
Expenditures to Date	\$ 451,053.25
Expenditures in Sixth Quarter	\$ 95,004.54

II. CTO's Comments

III. CO's Comments

ANNEX A: Liste des invités

Présentation sur le développement de l'arbitrage et de la médiation à Madagascar Hotel Hilton-Madagascar Salle Ravinala B

Vendredi 12 novembre 1999

Gouvernement de Madagascar:

Monsieur RAKOTOBRAMBOA Noel
Coordonnateur technique de la réforme juridique
Ministère de la Justice, Faravohitra Antananarivo
Tel.: 22 210 30 ou 22 274 57

Madame RATSIAROVALA Lala
Coordonnateur du volet réforme de la Justice (PAIGEP)
Tel.: 22 215 14 Ministère de la Justice Faravohitra Antananarivo

- Monsieur RAZANAKOTO Georges
Directeur des Etudes
Ministère de la Justice

Mademoiselle Voahangy RADARSON
Directeur des relations interprofessionnelles
Ministère du Développement du Secteur Privé et de la Privatisation
Anosy

Madame RAKOTONIAINA Victoire
Magistrat
Président du comité de réforme du droit des affaires (CRDA)

Madame RAZAFIMAHAZO, Léa
Directeur du Travail et des Lois Sociales – Ministère de la Fonction Publique
Tel.: 22 215 41. Fonction Publique 67ha - Antananarivo

Ambassade des Etats-Unis

S.E. Madame l'Ambassadeur des Etats-Unis Shirley E. Barnes

Monsieur Chip ZIMMER
Attaché Commercial - Ambassade des Etats-Unis

Pour l'USAID- Madagascar:

Madame Karen POE
Directeur General

Monsieur Léon S. WASKIN
Directeur General Adjoint

Madame Mary NORRIS
Directeur du Programme Démocratie et Croissance Economique. bvh

Monsieur François VEZINA
Coordonnateur programme de réforme juridique et judiciaire

Madame Corinne RAFAELL
Expert Juridique

Monsieur Fidèle RAHENOMANJERA
Economiste

USIS:

Madame Joanne McKNIFF
Directeur de l'USIS

Coopération Française :

Madame le Chef de Mission de la Coopération Française

Monsieur André ROGER
Responsable de la reforme juridique et judiciaire auprès de la mission de Coopération Française
Tel. : 22-210-30, Ministère de la Justice, Faravohitra Antananarivo

Juristes et Magistrats:

Monsieur RABARIJOHN Lucien
Premier Président de la Cour d'Appel

Madame RAZAFIMANDIMBY Aimée
Premier Président de la Cour Suprême

Monsieur RATSIMISETRA
Procureur Général de la Cour d'Appel

Madame RABENJARIVELO Hortense
Président de la chambre commerciale à la Cour d'Appel

Batonnier Monsieur RAZAFINDRAINIBE Parson Harivel
Président de l'ordre des avocats de Madagascar

Maître Jean RAKOTONOMENENJANAHARY
Avocat, Tamatave
Président du comité de Suivi sur l'arbitrage de Tamatave
Jeune Chambre de Commerce

Maitre RALALASOA Irène
Avocat

Maître LOBARDY

Avocat

Mesdames et Messieurs les membres du Conseil de l'Ordre des avocats.
Anosy

Le milieu académique:

Madame Bakolaloa
Directeur de l'Ecole Nationale de la Magistrature et des Greffes.

Monsieur RAHARIMARIVONIRINA Alisaona
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Monsieur RAKOTOARISOA Eric
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Monsieur RAJAONSON Gédéon
Ingénieur des travaux publics, Secrétaire général du GEPF (Groupement des Entreprises Franches)

Monsieur RALISON Alphonse
Opérateur Economique
Président du groupement des opérateurs économiques (FIVMPAMA)

Madame la Présidente des Femmes Entrepreneurs de Madagascar (FEM)

Monsieur RATSIFARITANA Charles,

Nova Knits
Tanjambato

Monsieur RAVELOSON Clovis
Directeur Général Adjoint de la Banque BNI – Crédit Lyonnais
Membre du Groupement des entreprises de Madagascar (GEM)

Monsieur RAZAFIMAHEFA Edmond
Secrétaire Général de la Chambre de Commerce
Fianarantsoa

Monsieur RAZAFINDRAKOTO Tôty
Entrepreneur, Directeur du comité de suivi d'Antsirabe.

Madame le Secrétaire de l'APEM

Monsieur le Coordonnateur du CRC (Comité de Réflexion sur la compétitivité)

Monsieur le Président du Groupement des Entreprises de Madagascar (GEM)
Tel. : 22 238-14

Monsieur le Président de PROMABIO
Syndicat Professionnel des opérations en agriculture biologique.
Tel. : 22 225 35

Monsieur le Secrétaire Général de la Chambre de Commerce et d'Industrie et d'Agriculture
Tel. : 22 206-11

Monsieur de Président du CONECS
Savonnerie Tropicale, Ankorondrano Antananarivo

Monsieur le Président de SIHM
Syndicat de l'Industrie Hotelière de Madagascar

Monsieur le Président de MASTER
Managers et Stratèges Réunis

Monsieur le Président du GAPCM
Groupement des armateurs à la pêche crevettière de Madagascar

Monsieur le Président de l'AMIHA
Association Malgache de l'Industrie de l'Habillement

Monsieur le Président de CEVOI
Comptoir d'exportation des vanilles de l'Océan Indien

Autre

Monsieur le Representant Résident de la Banque Mondiale

Le Représentant Résident du PNUD

Monsieur le Président de l'ADERM
Antenne pour le Développement des échanges entre la Réunion et Madagascar

Monsieur le Président du GPCAD
Groupement Professionnel des commissionnaires agréés de Douanes

Monsieur le Directeur de l'AUXIMAD
Société Auxiliaire et Maritime de Madagascar

Madame le Directeur de la Maison du Tourisme à Madagascar

Les media

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Monsieur le Directeur de Publication de Madagascar Tribune

Monsieur le Directeur de Publication de Midi Madagasikara

Monsieur le Rédacteur de la Revue de l'Océan Indien (ROI)

Monsieur le Rédacteur en chef de MATV

Monsieur le Directeur de RTA

Monsieur le Directeur de la Télévision Malagasy

Monsieur le Directeur de la Radio Alliance FM92

Monsieur le Directeur de la Radio ANTSIVA

Le RV Père Directeur de la Radio Don Bosco

Monsieur le Directeur de la Radio Korail

Monsieur le Directeur de la Radio Lazan'Iarivo

Monsieur le Directeur de la Radio Nasionaly Malagasy Anosy

Monsieur le Directeur de la Radio Tsioka Vao

Monsieur le Directeur de la Radio Télévision Analamanga

Monsieur le Directeur de la Radio Feon'Imerina

Monsieur le Directeur de l'Express de Madagascar

Monsieur le Directeur de la Publication de Dans le Média de Demain (DMD)

Pour ARD/Checchi et JURECO:

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Monsieur Raphaël Jakoba, ARD/Checchi

Madame Elisa RAZAFINARIVO, Jureco

Monsieur Louis Rajaonera, Jureco

Monsieur Mboara Andrianarimanana, Jureco

Monsieur Ramarolanto Ratiaray, Jureco

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